

EXHIBIT 14

1 A P P E A R A N C E S

2 On behalf of the Plaintiffs:

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8 On behalf of the Defendants:

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1 I N D E X

2 EXAMINATION BY: PAGE:

3 MR. SMEDSTAD 4

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7 E X H I B I T S

8 DEFENDANTS' EXHIBIT: PAGE:

9 1 Original Declaration, 39 pages 9

10 2 Amended Declaration, 35 pages 11

11 3 Plaintiffs' Second Amended
12 Complaint, 26 pages 14

13 4 Driver's Log, Bates stamped
MT617 and MT618 76

14 5 Google Maps Printout, 1 page 89

15 6 Invoice, 5 pages 107

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21 (Exhibits attached to the transcript.)

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1 JOSEPH A. KROCK, Ph.D.,
2 called as a witness by the Defendants, who, having been
3 duly sworn by me, was examined and testified as
4 hereinafter set forth.

5 ---oOo---

6 EXAMINATION BY COUNSEL FOR THE DEFENDANTS
7 BY MR. SMEDSTAD:

8 Q Would you state your name for the record.

9 A My name is Joseph Krock. Last name is
10 K-r-o-c-k.

11 Q And I know you've been deposed before. How
12 many times have you been deposed?

13 A Somewhere between 15 and 20.

14 Q When I looked over your C.V., I did not take
15 personal umbrage at the fact that you did not list a
16 deposition in connection with the Garcia matter.

17 Was that an oversight?

18 A Shouldn't have been. I don't know if it's in
19 there now, but...

20 Q I'm going to be handing you your report, and
21 it's on the first exhibit, I think, so you can take a
22 look at that.

23 Would you briefly describe your educational
24 background.

25 A I received a Bachelor's of Arts degree in

1 Q Now, looking at Summary Conclusion ii on page
2 4, it's my understanding that you have withdrawn your
3 opinions relating to this summary conclusion; is that
4 correct?

5 A That's correct.

6 Q Do you know why you're withdrawing those
7 opinions?

8 A Counsel asked me to withdraw that.

9 Q Do you know why Ms. Goddard asked you to
10 withdraw those opinions?

11 A I do not.

12 Q Did Ms. Goddard explain why she asked you to
13 withdraw those opinions?

14 A No.

15 Q Did you have any concerns regarding
16 withdrawing your opinions at Ms. Goddard's request?

17 A No.

18 Q You indicate in Footnote 1 of Exhibit 1 that
19 you have not been asked to offer any opinions regarding
20 the time that plaintiffs spent in orientation, correct?

21 A That's correct.

22 Q So you have no opinions regarding the
23 plaintiffs' orientation claims, correct?

24 A That's correct.

25 Q Do you know why you were not asked to offer

1 any opinions regarding plaintiffs' orientation claims?

2 A I do not.

3 Q Are any of your opinions based on information
4 you received directly from talking with the plaintiffs?

5 A No.

6 Q Have you ever talked with the plaintiffs?

7 A No.

8 Q Have you ever read the plaintiffs'
9 depositions?

10 A Let me review what I've reviewed. I did not
11 spend -- if they were given to me, I reviewed them
12 quickly but I did not spend a great amount of time, but
13 I'm not sure.

14 No.

15 Q So you did not discuss your analysis with the
16 plaintiffs to see if it was consistent with what they
17 said they were doing during their employment with May
18 Trucking, correct?

19 A That's correct.

20 Q Why not?

21 A I was not asked to.

22 Q Wouldn't that have been a way to test the
23 validity of some of the assumptions that underlie your
24 analysis?

25 MS. GODDARD: Objection. Calls for

1 speculation.

2 THE WITNESS: I was asked to make those
3 assumptions by counsel.

4 BY MR. SMEDSTAD:

5 Q I understand that. But my question is related
6 to your work as an expert. Wouldn't a way that you
7 would -- wouldn't you consider talking with the
8 plaintiffs a way of validating the assumptions you were
9 asked to make?

10 A Well, ultimately the analysis will depend on a
11 legal opinion arrived at by the Court. And my opinion
12 about whether or not the analysis could be performed in
13 a general sense is not particular to the assumptions
14 that are made.

15 Q Well, your analysis relates to what the
16 plaintiffs were doing while they were employed at May
17 Trucking, right?

18 A Yes.

19 Q The activities they were performing?

20 A That they were recording in their driver's
21 logs, yes.

22 Q That they said they were performing?

23 A Yes.

24 Q Wouldn't it have been helpful to talk to them
25 about the accuracy of the logs you were relying on?

1 you based your analysis matter to the
2 accuracy of your opinions that you've
3 offered in this case?")

4 THE WITNESS: No.

5 BY MR. SMEDSTAD:

6 Q Okay. So the calculations that you've
7 performed are accurate regardless of whether or not the
8 data, the logs, on which you relied are accurate; is
9 that correct?

10 A The calculations are as accurate as the data,
11 the driver's logs are.

12 Q Did you do anything to validate the data on
13 which you based your calculations?

14 A Again, the opinion is whether or not this can
15 be done. I did not validate the data. I didn't have a
16 reason to believe that it was inaccurate.

17 Q Is it your typical practice not to validate
18 data that you're relying on?

19 A Well, to the extent that validating data is
20 possible, and oftentimes it's not possible to validate
21 the data, you have to take it as it is and understand
22 what the potential limitations there are to it.

23 Q As an expert, can you think of any way in
24 which you would have validated the data on which you
25 relied on in this case?

1 MS. GODDARD: Objection. Incomplete
2 hypothetical. Calls for speculation.

3 THE WITNESS: I'm unaware of another way to
4 validate this data. Deposition testimony is not going
5 to be detailed enough to validate a particular day's
6 events. And I'm not aware of other pieces of data that
7 would corroborate or refute what we found in the
8 driver's logs.

9 BY MR. SMEDSTAD:

10 Q As you sit here today, do you have any basis
11 on which to opine as to the validity of the data that
12 you analyzed in coming to your conclusions in this case?

13 A I understand that the driver's logs were kept
14 as a matter of the Department of Transportation
15 regulations, and that there are reasons why that's kept
16 from -- in the transportation industry. So that would
17 give me a reason to believe that it has to be more
18 accurate than less.

19 Q Do you have any basis on which to opine as to
20 the validity of the data that you analyzed in coming to
21 your conclusions in this case?

22 A No.

23 Q Your declaration does not contain any margin
24 of error, true?

25 A It's not a statistical calculation. There is

1 no margin of error.

2 Q That's because your calculations are either
3 correct or they're not correct, true?

4 A No. The calculations are what the
5 calculations are. They're not -- there's not a true or
6 false on that.

7 Q Well, they're either accurate or they're not,
8 right?

9 A They are accurate for what -- what the
10 calculations mean.

11 Q Well, if the data on which you relied to come
12 up with your calculation of the amount that the
13 plaintiffs were allegedly underpaid is not accurate,
14 then your calculations and opinions are not accurate,
15 correct?

16 MS. GODDARD: Objection. Calls for a legal
17 conclusion.

18 THE WITNESS: The calculation is a
19 representation of the data that we have. If the data is
20 not accurate, then the representation of that may not be
21 accurate. But the calculation with the data that we
22 have represents that data.

23 BY MR. SMEDSTAD:

24 Q So assuming that all of the data that you
25 analyzed is 100 percent valid and 100 percent accurate

1 as a representation of that which you have been told it
2 is, then your calculations are accurate?

3 A The calculations are going to be accurate with
4 the data that we have.

5 Q Because all the calculations are are addition,
6 subtraction, multiplication and division, right?

7 A Beyond the other factors of getting everything
8 together, yes.

9 Q Beyond understanding what it is that you're
10 going to add, subtract, multiply and divide, right?

11 A Yes.

12 Q I mean, ultimately, the number figures that
13 you offered in this case are all a product of addition,
14 subtraction, multiplication and division?

15 MS. GODDARD: Misstates the witness's
16 testimony.

17 BY MR. SMEDSTAD:

18 Q Correct?

19 A There's more to it, but the ultimate
20 calculations, yes, are that.

21 Q And there's no purpose in having a margin of
22 error when your calculations are addition, subtraction,
23 multiplication and division, right?

24 A "Margin of error" is a statistical term, and
25 this is not a statistical calculation.

1 Q So there's no purpose in having a margin of
2 error in terms of the calculations that you performed?

3 A I wouldn't -- a margin of error would not come
4 into the discussion of this.

5 Q But if you are going to offer opinions as to
6 what the ultimate amount of compensation that the
7 plaintiffs are owed, it's important that you understand
8 that you have added and subtracted and multiplied and
9 divided the right numbers, isn't it?

10 A Yes.

11 Q But not important enough for you to do
12 anything to validate that those numbers were accurate in
13 this case, correct?

14 A Again, as I said earlier, I'm not aware of
15 information that would validate this data in a way that
16 would change my opinions.

17 Q And so you didn't undertake any efforts to
18 validate it?

19 A I -- I'm unaware of a way to validate this
20 data.

21 Q The question's a little bit different.

22 You didn't take any efforts to validate the
23 data?

24 A No.

25 Q You analyzed driver's logs, correct?

1 A That's correct.

2 Q And you analyzed driver logs for Mr. Nance,
3 correct?

4 A Yes.

5 Q Who prepared Mr. Nance's driver's logs?

6 A I assume Mr. Nance did.

7 Q Wouldn't you have been able to determine
8 whether or not your assumption was correct by talking to
9 Mr. Nance?

10 A That would be one way to do it, I guess.

11 Q That would be a way of validating that
12 assumption, right?

13 A Possibly.

14 Q Is it possible, or is that a way?

15 A That is -- it's one of the ways.

16 Q But you didn't?

17 A No.

18 Q Okay. And wouldn't you have also asked
19 Mr. Nance about his practice in creating the logs to
20 determine whether or not his practice was to create them
21 accurately?

22 A That would be a way.

23 Q Why didn't you do that?

24 A I was not asked to, and I didn't think that --
25 for the purposes of my calculations here of determining

1 A If we determined that the truck was moving,
2 yes.

3 Q Well, you don't actually know whether the
4 truck was moving during the entire off-duty or sleeper
5 berth time that you consider compensable, do you?

6 A Not the entire time, no.

7 Q Really, all you can tell is whether the truck
8 moved, correct?

9 A We had looked at a couple of pieces of that,
10 whether the truck moved and what the implied speed of
11 that movement would be.

12 Q But you only looked at implied speed if one
13 location was within the same city as a duty change,
14 correct?

15 A We may have looked at it on the broader
16 perspective, but I know that we noted that -- or I noted
17 that in my declaration for the shorter periods of
18 time -- or shorter distances, sorry.

19 Q Here's what you say. And I'm looking now at
20 page 5, paragraph 17 of Exhibit 1.

21 "If the same city is listed in the subsequent
22 location, I designated the truck in motion if the
23 implied speed (i.e., distance divided by duration) was
24 greater than 25 miles per hour."

25 That's what you said, correct?

1 A That's correct.

2 Q And it doesn't indicate that you did any
3 calculation to determine implied speed other than in
4 that circumstance, correct?

5 A It would have been a result of the
6 calculation. I don't know that we spent any great
7 effort looking at that, because usually the distances
8 were much larger once we were outside of the same two
9 cities.

10 Q Well, I need to know, did your analysis
11 calculate the implied speed for every location change?

12 A I would need to go back to look at the code.
13 It very well could have been.

14 Q Well, you apparently didn't disclose it to me
15 or the Court, correct, if you did it?

16 A No.

17 Q No, that's not correct?

18 A No, I did not disclose it.

19 Q So --

20 A But --

21 Q Go ahead.

22 A Sorry. But it would be something that would
23 be easily calculable for those points because we know
24 the distance between and the time between, so the
25 implied speed would be an addition, subtraction,

1 multiplication kind of calculation.

2 Q Why did you not disclose your process in your
3 declaration?

4 A I'm sorry, what do you mean, "process"?

5 Q Well, if you in fact calculated implied speeds
6 for other circumstances other than as disclosed in
7 paragraph 17 of your declaration, why wouldn't you have
8 disclosed that to the Court and to opposing counsel?

9 A I didn't find it to be -- to bear on my
10 opinions and my conclusions.

11 Q Did you do anything to ensure that the truck
12 was moving during the entire off-duty or sleeper berth
13 time that you considered compensable?

14 A No.

15 Q Why not?

16 A That information was not available. And we
17 did see periods of time in review of the data, where we
18 would see the truck get to a point and stop moving for
19 longer periods of time. So there was indications that
20 various entries where they were sleeper berth or
21 off-duty time and the truck wasn't moving at times you
22 would expect it.

23 Q Not to be moving?

24 A Not to be moving, yes.

25 Q In other words, a validation of the log

1 entries as being off-duty or in a sleeper berth?

2 A Well, if we see sleeper berth and the truck
3 not moving over nights, then that would kind of
4 corroborate the idea that they were parked and sleeping.

5 Q Do you have any basis on which to opine that
6 the truck was moving during the entire off-duty or
7 sleeper berth time that you considered compensable?

8 A No.

9 Q Do you have any training that would allow you
10 to determine whether the truck was moving during the
11 entire off-duty or sleeper berth time that you
12 considered compensable?

13 A No.

14 Q If the truck was not in fact moving during the
15 entire off-duty or sleeper berth time that you
16 considered compensable, that would impact the accuracy
17 of your calculations, true?

18 A To the extent of the time that was -- that it
19 was not moving, yes.

20 Q So they would be as inaccurate as the time in
21 which the truck was not in fact moving?

22 MS. GODDARD: Objection. Vague and ambiguous.

23 BY MR. SMEDSTAD:

24 Q Right?

25 A Yes.

1 Q And you don't know how inaccurate that is, do
2 you?

3 A We do not have that information.

4 Q So if you were to take the stand and the judge
5 were to say, "Dr. Krock, I understand that you have
6 determined that some of the time that the plaintiffs
7 marked as sleeper berth or off-duty should be
8 compensable because the truck was moving. How confident
9 are you in the determination of the amount of time that
10 the truck was moving?" You would have to say, "I don't
11 know," correct?

12 A I would say that the information that we have,
13 there are distinct periods of sleeper berth time where
14 the truck is not moving, and sleeper berth time where
15 the truck is moving.

16 I would -- considering the way the logs were
17 filled out, would expect it to be a high degree of
18 certainty that the truck was actually moving when it was
19 sleeper berth and the truck was moving.

20 Q But the entire time?

21 A That's very possible, yes.

22 Q But you have no way of saying, right?

23 A No.

24 Q Is that correct?

25 A That's correct.

1 Q Do your calculations account for the
2 possibility that a significant portion of the time that
3 you considered compensable because the truck was moving
4 while plaintiff had marked his time as off-duty or in
5 the sleeper berth, that the truck was not in fact
6 moving?

7 A It really depends on the data and the items.
8 There's -- the data is granular enough that we see
9 shorter periods of time for certain events that are
10 happening in the two- and three-hour range. So the
11 impact of this, of what you're suggesting, is not
12 really -- the impact, in my review of the data, would
13 be -- would be less -- my expectation of it would be
14 less than significant.

15 Q Well, let's be clear. Do you have an opinion
16 as to the amount of time that the truck was actually
17 moving that you incorporated as compensable even though
18 the plaintiff marked their time as off-duty or sleeper
19 berth?

20 A My assumption is that it was 100 percent of
21 the time.

22 Q I understand. But can you actually say that
23 your assumption was correct?

24 A No.

25 Q Do you know whether your assumption was

1 correct?

2 A In my review of the data, I believe it is.

3 Q Do you know whether your assumption was
4 correct?

5 A No.

6 Q Do you know what the plaintiffs were in fact
7 doing during the time that they recorded as off-duty?

8 A No.

9 Q Do you know what the plaintiffs were in fact
10 doing during the time they recorded as being in sleeper
11 berth?

12 A No.

13 Q Do you have any training that would allow you
14 to determine what the plaintiffs were doing while they
15 were off-duty?

16 A No.

17 Q Do you have any training that would allow you
18 to determine what the plaintiffs were doing while they
19 were in the sleeper berth?

20 A No.

21 Q For example, do you know whether the
22 plaintiffs were reading, sleeping or surfing the
23 Internet while they were off-duty?

24 A I don't know.

25 Q Do you know whether the plaintiffs were

1 THE WITNESS: The answers that I have for the
2 plaintiffs would not be the same answers. The process
3 still holds.

4 BY MR. SMEDSTAD:

5 Q And so the answers that you have come up with
6 would no longer be accurate?

7 MS. GODDARD: Asked and answered.

8 THE WITNESS: They would be different. It's
9 not a matter of accuracy.

10 BY MR. SMEDSTAD:

11 Q Well, aren't you holding yourself out as an
12 expert capable of identifying that which these
13 plaintiffs have been underpaid for work that they
14 actually performed?

15 A I was given the underlying assumptions to make
16 the calculations.

17 Q My question's different.

18 Please read my question back.

19 (Record read as follows:

20 "Question: Well, aren't you
21 holding yourself out as an expert
22 capable of identifying that which these
23 plaintiffs have been underpaid for work
24 that they actually performed?")

25 THE WITNESS: I've identified periods of time

1 A Yes.

2 Q So directing your attention to page 2 of
3 Exhibit 4, it shows that Mr. Freedman went into the
4 sleeper in Keizer, Oregon, correct?

5 A That's where he was starting at midnight, yes.

6 Q That's where he went into the sleeper. That's
7 an activity change, correct?

8 A Well, he was in the sleeper from 9:00 the
9 previous night, and remained in it until 10:45 the
10 previous morning -- or the next morning --

11 Q So this starts --

12 A -- I'm sorry.

13 Q The next morning?

14 A The next morning, yes.

15 Q Okay. And he left the sleeper and started
16 driving in Springfield, Oregon, correct?

17 A That's correct.

18 Q How many hours after he entered the sleeper?

19 A Approximately 14 hours.

20 Q Did you count all 14 hours as time that the
21 truck was moving?

22 A I would need to go back and look at that
23 specific observation, but it would -- I wouldn't know
24 just sitting here today.

25 Q Well, you told me earlier, and your

1 Google map that we pulled from Google. And it suggests
2 that there are 71 miles between Keizer, Oregon and
3 Springfield, Oregon.

4 Is that what that looks like to you?

5 A That's what it says.

6 Q And it also reflects that it should take about
7 an hour and 13 minutes to drive between Keizer, Oregon
8 and Springfield, Oregon.

9 Does that suggest to you that your inclusion
10 of 10 hours and 45 minutes of moving time was inaccurate
11 if in fact you included that time as moving time?

12 MS. GODDARD: Objection. Vague and ambiguous.
13 Lacks foundation.

14 THE WITNESS: Again, I don't know the
15 specifics of what the truck moved, but this also is a
16 refinement to the analysis that we could perform in the
17 future too.

18 BY MR. SMEDSTAD:

19 Q Well, let's take for the sake of argument now
20 that in fact it only took an hour and 13 minutes for the
21 truck to move from Keizer to Springfield.

22 All right?

23 A Okay.

24 Q And let's also take for the sake of argument
25 that your analysis included the full 10 hours and 45

1 minutes as compensable because you assumed the truck was
2 moving.

3 All right?

4 A Okay.

5 Q So that would mean that 9 1/2 hours should
6 have been excluded from compensable time, correct?

7 A If that's what happened, then yes.

8 Q Okay. And under the Oregon analysis, that
9 would result in a decrease in the amount of compensation
10 that Mr. Freedman was owed by 9.5 times 8.5, correct?

11 A It's a little bit different with the flat wage
12 pay, but...

13 Q In terms of determining how much he was
14 entitled to?

15 A Yes.

16 Q Right?

17 A Yes.

18 Q So let's just see if I can use a calculator.
19 9.5 times 8.5 equals \$80.75. Does that sound
20 right to you? Have I done that correctly?

21 A It -- roughly, it's fine.

22 Q Would you like to check it?

23 A No. I'm okay.

24 Q So if you included the full 10 hours and 45
25 minutes and it only in fact took an hour and 15 minutes

1 to get from Keizer to Springfield, that would increase
2 the amount of potential compensable wages by over \$80,
3 correct?

4 MS. GODDARD: Objection. Incomplete
5 hypothetical.

6 THE WITNESS: In that particular case, yes.

7 BY MR. SMEDSTAD:

8 Q Okay. And that's not an insubstantial sum
9 when you're talking about one day and a total damage of
10 a thousand dollars and change, correct?

11 A I don't know that I would characterize it as
12 insubstantial or substantial.

13 Q Well, how much did you calculate Mr. Freedman
14 was owed under all of -- assuming that all of your
15 assumptions were correct under Oregon law?

16 A Mr. Freedman was \$2,234.36.

17 Q For the entire time, correct?

18 A For his training period, yes.

19 Q For training. And this \$80 swing represents
20 an \$80 swing in one day, correct?

21 A Yes.

22 Q And how many days did Mr. Freedman spend in
23 training?

24 A I don't know that off the top of my head.

25 Q Can you take a look at your report and find

1 out?

2 A I don't know the specific number, but 38 days,
3 approximately.

4 Q So let's walk through a little math here. If
5 you take 38 days and multiply it by \$80, that gives you
6 \$3,040, correct?

7 A I --

8 Q Don't take my word for it. You do it.

9 A What is the --

10 Q 38 days times \$80.

11 A It's \$3,040.

12 Q Okay. That's more than the total amount that
13 you have calculated Mr. Freedman is due, correct?

14 A Yes, but we -- total calculation for
15 Mr. Freedman's sleeper moving time is 273.28.

16 MS. GODDARD: I think you're looking at the
17 old declaration.

18 THE WITNESS: This is the old one? Oh, yeah.

19 Total sleeper moving time for Mr. Freedman was
20 264.20.

21 BY MR. SMEDSTAD:

22 Q Multiply 264.20 by \$8.50.

23 A 8.50?

24 Q Yeah.

25 A 2245.

1 Q And is that more or less than the total amount
2 that you calculated he would be due under Oregon law?

3 A A little bit more.

4 Q If in fact you counted -- your analysis
5 counted substantial periods of time where the truck was
6 not in fact moving, but you assumed that it was because
7 it changed city location, that could conceptually wipe
8 out, or all but wipe out the entire amount of damage
9 that you're claiming, correct?

10 MS. GODDARD: Objection. Incomplete
11 hypothetical.

12 THE WITNESS: It would depend on the
13 proportion of -- of non-moving time. And like I said,
14 this is something that we could add as a refinement to
15 the analysis without an issue.

16 BY MR. SMEDSTAD:

17 Q But we're at class certification right now,
18 and you've offered a declaration that suggests in part
19 that you can do these calculations, and that these
20 calculations are accurate and can be relied upon as
21 accurate, and that it's worthwhile to do it. And so I'm
22 talking to you about what you've told the Court today,
23 not what you might tell the Court down the road.

24 Based on the analytical exercise that we've
25 just gone through, would you agree with me that it is

1 entirely possible that if we excluded time where the
2 truck was not in fact moving that you counted as
3 compensable, it might wipe out, or all but wipe out the
4 entirety of Mr. Freedman's damages?

5 MS. GODDARD: Objection. Lacks foundation.
6 Incomplete hypothetical.

7 THE WITNESS: Again, it would depend on the
8 amounts of time that we're talking about.

9 BY MR. SMEDSTAD:

10 Q It could, correct?

11 A It's possible.

12 Q Okay. And we can't tell from your report, can
13 we?

14 A Can't tell what?

15 Q Whether it would.

16 A No.

17 Q How many of the 264 hours of sleeper or
18 off-duty time that you included as compensable was the
19 truck in fact not moving?

20 A I don't know.

21 Q I know you've withdrawn your opinions
22 regarding whether the plaintiffs suffered any damages
23 while they were over-the-road drivers, correct?

24 A That's correct.

25 Q And was that a result of your independent

1 exercise of professional judgment?

2 A No, counsel asked me to withdraw that.

3 Q And so you did?

4 A Yes.

5 Q I do want to talk to you about some of the
6 conclusions that you reached when you analyzed the
7 plaintiffs' over-the-road work.

8 As I understand your calculations, you
9 calculated that under federal law, the plaintiffs were
10 owed nothing if sleeper berth was not compensable,
11 correct?

12 A That's correct.

13 Q Did that suggest to you that there was not
14 something systemically problematic about May Trucking's
15 compensation structure? In other words, that it would
16 necessarily undercompensate the plaintiffs?

17 MS. GODDARD: Objection. Vague and ambiguous.

18 THE WITNESS: Can you read that back, please.

19 (Record read as follows:

20 "Question: Did that suggest to
21 you that there was not something
22 systemically problematic about May
23 Trucking's compensation structure? In
24 other words, that it would necessarily
25 undercompensate the plaintiffs?")

1 THE WITNESS: For the OTR drivers?

2 BY MR. SMEDSTAD:

3 Q Yes.

4 A I didn't form an opinion about that.

5 Q Okay. And I think you told us that you can't
6 tell, you don't know whether the plaintiffs were
7 properly compensated if you exclude the sleeper berth
8 time you included as compensable, correct?

9 A I think we would need to go back and re-run
10 the analysis.

11 Q So you don't know?

12 A I don't know.

13 Q Well, don't you know? If you know the total
14 amount of time, moving time that you included, couldn't
15 you back that out?

16 A I would prefer to run the analysis and find
17 out.

18 Q Well, analytically, couldn't you just back it
19 out?

20 MS. GODDARD: Objection. Incomplete
21 hypothetical.

22 THE WITNESS: I'm not 100 percent sure you can
23 do that.

24 BY MR. SMEDSTAD:

25 Q Why?

1 A I would like to re-run the analysis and see
2 it.

3 Q What gives you pause about whether or not you
4 could do it?

5 A Whether I can back it out?

6 Q Yeah.

7 A I can back it out if I had my program.

8 Q Well, you told me a bit ago that you were able
9 to determine that Mr. Freedman had a total of 264 hours
10 that you included as compensable while he was in sleeper
11 or off-duty, correct?

12 A Yes.

13 Q And if you subtracted 8 1/2 times 264,
14 wouldn't that give you your answer?

15 A I'm not 100 percent sure that's true.

16 Q Why not?

17 A I would need to run the analysis.

18 Q As you sit here today, can you tell me why
19 that's not true?

20 A No.

21 Q Okay. Would you agree with me that 264 times
22 \$8.50 is \$2,244?

23 A I think I calculated that shortly before, yes.

24 Q Would you agree with me that that number is
25 more than your calculation of the total amount that

1 Mr. Freedman alleges to be due under Oregon law?

2 A It was larger than that number, yes.

3 Q Do you know whether Oregon's minimum wage law
4 applies to activities that the plaintiffs performed
5 outside of Oregon?

6 A I -- I'm sorry.

7 MS. GODDARD: I was going to say, object to
8 the extent it calls for a legal conclusion.

9 THE WITNESS: I don't.

10 BY MR. SMEDSTAD:

11 Q You don't know. Okay.

12 If Oregon minimum wage law does not apply to
13 activities performed outside of Oregon, does your report
14 offer the Court a basis on which to determine which
15 activities were performed in Oregon and which were not?

16 A It doesn't, but it could be included easily.

17 Q And again, I'm just talking about what you
18 have chosen to include, sir.

19 A It doesn't.

20 Q Okay. You said it could be included easily,
21 and I want to follow up on that.

22 You told me a bit ago that you have no way of
23 determining how long the truck was in fact moving at any
24 given time, correct?

25 A That's correct.

1 Q If you can't tell for certain how long the
2 truck was moving, how can you say which state the truck
3 is in every minute of the day?

4 A We can estimate that using the points in
5 the -- in the data.

6 Q But you wouldn't be able to determine, for
7 example, the precise time that the truck crossed the
8 Oregon state line, could you?

9 A Not with the data that we have, no.

10 Q And your opinions don't offer the Court any
11 explanation as to how you would go about determining
12 which activities were performed in Oregon and which were
13 performed outside of Oregon, correct?

14 A It does not.

15 Q And your report does not reflect how you would
16 go about allocating the pay amongst those activities,
17 does it?

18 A It does not.

19 Q So it's fair to say, based on the reports that
20 you have tendered, you have not offered any opinions
21 that you would be able to differentiate work done within
22 Oregon from work done outside Oregon, correct?

23 A To the extent that -- my understanding is that
24 the FLSA -- FLSA law -- or the FLSA applies outside of
25 Oregon. If we assume that that's kind of a bottom-line

1 number, and then the Oregon law would be the top-end
2 number, if all activities were involved -- if all
3 activities performed in and outside of Oregon applied to
4 Oregon law, the Oregon number would be the number that
5 applies. In the alternative, the bottom end of that is
6 the FLSA calculation.

7 Q And my question was different.

8 As of today, you have not offered an opinion
9 that you are able to differentiate work done within
10 Oregon from work done outside Oregon, correct?

11 A That's correct.

12 Q Did you determine where Mr. Freedman was when
13 he elected to idle his truck?

14 A I'm not aware of a specific idling incident,
15 so...

16 Q Well, you made a damage calculation relating
17 to deductions for idling, correct?

18 A I did.

19 Q Do you know where Mr. Freedman was when he
20 elected to idle his truck?

21 A I don't believe so.

22 Q Do you know whether it occurred in Oregon?

23 A I do not.

24 Q Did you determine why Mr. Freedman elected to
25 idle his truck?

1 A No.

2 Q Did you determine whether Mr. Freedman asked
3 for an exception to the idle policy?

4 A No.

5 Q Do you have any basis to determine why
6 Mr. Freedman idled his truck?

7 A No.

8 Q Do you have any basis to determine whether he
9 asked his supervisor for an exception to the idle
10 policy?

11 A No.

12 Q Do you have any basis to determine what the
13 supervisor's response was?

14 A No.

15 Q In your original report -- which you signed,
16 right?

17 A I did.

18 Q And you ensured that it was accurate?

19 A Yes.

20 Q You indicated on paragraph 28 that he had --
21 he, Mr. Freedman, had two deductions for idling totaling
22 \$18.99, correct?

23 A That's what it says in here, yes.

24 Q That's not right, is it?

25 A It doesn't appear so, no.

1 CERTIFICATION OF DEPOSITION OFFICER

2

3 I, CHERYL SLETTA, RPR, CSR, duly authorized to
4 administer oaths pursuant to Section 2093(b) of the
5 California Code of Civil Procedure, hereby certify that
6 the witness in the foregoing deposition was by me sworn
7 to testify to the truth, the whole truth and nothing but
8 the truth in the within-entitled cause; that said
9 deposition was taken at the time and place therein
10 stated; that the testimony of the said witness was
11 thereafter transcribed by means of computer-aided
12 transcription; that the foregoing is a full, complete
13 and true record of said testimony; and that the witness
14 was given an opportunity to read and correct said
15 deposition and to subscribe the same.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named, or in any way
19 interested in the outcome of this cause named in said
20 caption.

21

22

23

24

25

Cheryl Sletta
RPR, CSR No. 7354

1 BE IT REMEMBERED THAT, the deposition of LISA DAVIS
2 was reported by Mary C. Soldati, Registered Professional
3 Reporter, on Thursday, January 31, 2013, commencing at
4 the hour of 9:00 a.m., the proceedings being reported in
5 the Offices of Stoll Berne, 209 S.W. Oak Street, Suite
6 500, Portland, Oregon.

7
8 APPEARANCES:

9 PATTERSON LAW GROUP

10 By Allison H. Goddard

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14 ali@pattersonlawgroup.com

15 Appearing on behalf of the Plaintiffs

16
17 SCOPELITIS GARVIN LIGHT HANSON & FEARY

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21 jhanson@scopelitis.com

22 317.492.9205

23 Appearing on behalf of the Defendants

24
25 Also present: Christopher Simons

Beovich Walter & Friend

1

I N D E X

2

3

DEPONENT:

EXAMINATION

4

LISA DAVIS

5

By Ms. Goddard

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6

By Mr. Hanson

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E X H I B I T S

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NO.

DESCRIPTION

PAGE

13

14

32

May Trucking Webpage Printout

47

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Online Application Page

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1 P R O C E E D I N G S

2

3 LISA DAVIS,

4 was thereupon produced as a witness and, after having
5 been sworn on oath, was examined and testified as
6 follows:

7

8 EXAMINATION

9 BY MS. GODDARD:

10 Q. Good morning, Miss Davis. We met briefly, but
11 I'm Allison Goddard and I represent the Plaintiffs in
12 this case. Have you ever been deposed before?

13 A. No.

14 Q. I'm just going to go over some ground rules for
15 the deposition. The most important one is that you
16 understand that the testimony you're giving today is
17 under oath, as if you were sitting in the witness chair
18 in a court of law. And you're obligated to tell the
19 truth at all times; do you understand that?

20 A. I do.

21 Q. I'm going to be asking a series of questions.
22 And it's a bit of a stilted approach, because the court
23 reporter has to take down everything we say.

24 So once I ask my question, if you will just pause
25 briefly, your attorney, Mr. Hanson, may want to

1 stationed in Colton, California?

2 A. I think since -- I don't know.

3 Q. Okay. Do you know the name of that person?

4 A. Katie Law.

5 Q. L-A-W?

6 A. Mm-hmm.

7 MR. HANSON: You need to answer audibly.

8 A. Sorry, yes.

9 Q. After a driver is invited to attend an
10 orientation, does a recruiter have any role in
11 scheduling the logistics of how the driver is going to
12 get there, where they're going to stay?

13 A. Yes.

14 Q. Is that part of their responsibilities?

15 A. Yes.

16 Q. Can you describe briefly what they do in that
17 respect?

18 A. They set up a hotel, if they need one and bus, if
19 they need one, that is if it's a time that we're
20 actually paying for those things.

21 Q. Okay. So at some point in time the company
22 didn't pay for bus or hotel?

23 A. It depends on how full the trucks are. If we're
24 needing drivers, then we'll pay for them. If our trucks
25 are full and we don't need as many drivers, then we

1 MR. SIMONS: S-P-R-E-A-D-B-O-R-O-U-G-H.

2 Q. Okay. I got that now.

3 A. But we -- you said earlier we don't pay during
4 orientation.

5 Q. I understand that. So my question was, is there
6 any sort of written directions for recruiters to follow
7 when someone asks -- a driver asks if they're going to
8 be paid for orientation?

9 A. A set of instructions, no, other than saying they
10 wouldn't be paid during orientation.

11 Q. Okay. It's not in the recruiting script, for
12 example?

13 A. I don't think so.

14 Q. And do you know if recruiters are instructed in
15 writing in any way about how to address driver questions
16 about whether or not they'll be able to get a job
17 through this process?

18 A. Well, basically this is the interview process.
19 And just like any interview process, you know, if we
20 feel that they're a good candidate, then they may be
21 hired.

22 Q. Are you familiar what part of the orientation
23 involves -- that session at the company's facilities
24 involves an interview?

25 A. I think it's more -- and we don't sit down and

1 A. Yes, I do. It's just the performance history
2 request asking them if they've been in any accidents and
3 their previous employer.

4 Q. Is it part of an application packet?

5 A. I don't think so.

6 Q. Okay. Is it the type of information that would
7 either qualify or disqualify a driver?

8 A. It may.

9 Q. For example, if they had a previous accident,
10 that disqualified them?

11 A. It could.

12 Q. Does the company try to find that out before they
13 bring them up for orientation?

14 A. We would prefer it.

15 Q. Is it the typical standard practice to find that
16 out before orientation?

17 A. We like to find out as much as we can, so we're
18 not wasting money getting that driver to orientation
19 and finding a surprise.

20 Q. Of course. I'm going to show you what's been
21 marked as Exhibit 15. Just look at the first few pages
22 of Exhibit 15. Looks like Pages 492 through 497. It
23 looks like it's all part of the same form. If not just
24 correct me, please.

25 A. Looks like the driver qualification form.

1 A. I do.

2 Q. Is this something that the company typically asks
3 drivers to complete before orientation?

4 A. I don't know.

5 Q. Well, when you were the recruiting department
6 manager, is this information that you asked recruiters
7 to collect from drivers?

8 A. I don't know. At this period of time, when I was
9 recruiting manager, I managed the employees only. I had
10 nothing to do with the paperwork at this time.

11 Q. Okay. Who was monitoring the employees to make
12 sure that they got the proper paperwork in order?

13 A. The processing department manager, Kory Knox.

14 Q. Do you know if the company holds orientation
15 sessions at any other location other than Brooks,
16 Oregon?

17 A. They do.

18 Q. Do you know what other locations?

19 A. I do.

20 Q. What other locations?

21 A. Pensacola, Florida, Gary, Indiana, Denver,
22 Colorado, Payette, Idaho, Layton, Utah and Phoenix,
23 Arizona.

24 Q. Do you know how long the company has been having
25 orientation sessions at Pensacola?

CERTIFICATE

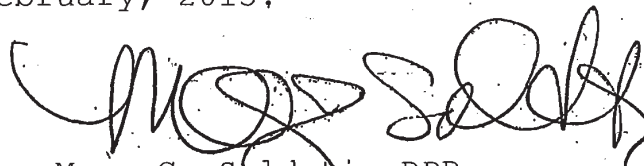
State of Oregon

County of Multnomah

I, Mary C. Soldati, Registered Professional Reporter and Notary Public in and for the State of Oregon, do hereby certify that LISA DAVIS, was satisfactorily identified and was duly sworn by me, and that such deposition is a true record of the testimony given by the witness.

I further certify that I am neither related to nor employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this 16th day of February, 2013.



Mary C. Soldati, RPR

My commission expires:

October 28, 2014